DJZ

266 NLRB No. 139

D--9804
Detroit, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

STANDARD STEEL TREATING CO.

and

Case 7--CA--21273

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW

and

LOCAL 157, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW

Party to the Contract

DECISION AND ORDER

Upon a charge filed on October 6, 1982, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, herein called the Charging Party, and duly served on Standard Steel Treating Co., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint and notice of hearing on November 19, 1982, against Respondent, alleging that Respondent had engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section

8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on all parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that at all times since 1955, and continuing to date, the Charging Party and its Local 157 have been the exclusive representative for the purposes of collective bargaining of all full-time and regular part-time production and maintenance employees employed by Respondent at its Detroit, Michigan, facility, and that Respondent and the Charging Party and its Local 157 have been signatories to successive collective-bargaining agreements since 1955 governing wages, hours, and working conditions of employees in the unit described above, the most recent of which expired on or about July 9, 1982. The complaint further alleges that commencing on or about July 1, 1982, and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the Charging Party and its Local 157 by: (1) on or about July 12, 1982, telling a unit employee that Respondent did not recognize the Charging Party as having any power over the working conditions in the plant since the collective-bargaining agreement had expired; (2) since on or about July 1, 1982, failing to pay unit employees the vacation benefits they had accrued under the collective-bargaining agreement; and (3) unilaterally changing the wages, hours, and other terms and conditions of employment of unit employees.

When no timely answer was filed to the complaint, the Regional Attorney for Region 7 wrote to Respondent on December 27, 1982, advising Respondent that it had not filed an answer to the complaint and that failure to file an answer by January 6, 1983, would result in the General Counsel filing a Motion for Default Judgment with the Board. Having received no response, the Regional Director for Region 7 wrote to Respondent on January 20, 1983, again advising Respondent that should it fail to provide an answer by January 28, 1983, the General Counsel would seek default judgment.

On February 2, 1983, counsel for the General Counsel filed directly with the Board a Motion for Default Judgment based on Respondent's failure to file an answer to the complaint, as required by Section 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended. Thereafter, on February 14, 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted, stating therein that Respondent should file its response in writing with the Board by February 28, 1983. Respondent has filed no response.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that, unless an answer was filed within 10 days from the service thereof, ''all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board.'' In addition, as outlined above, the General Counsel, according to the uncontroverted allegations of the Motion for Default Judgment, notified Respondent on two subsequent occasions that its answer was overdue and that he intended to move for default judgment based on the allegations in the complaint. Nevertheless, Respondent failed to respond in any manner. Further, Respondent has not responded to the Notice to Show Cause. Accordingly, as Respondent has not filed an answer as required under the Board's Rules and Regulations, and as no good cause for its failure to do so has been shown, the allegations of the complaint are deemed to be admitted and are found to be true. We hereby grant the General Counsel's Motion for Default Judgment.

Upon the entire record in this proceeding, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent Standard Steel Treating Co., a corporation duly organized under and existing by virtue of the laws of the State of Michigan, has maintained its principal office and place of business at 12934 Evergreen, Detroit, Michigan, herein called the Detroit plant, and the only facility involved in this proceeding. Respondent is, and has been at all times material herein, engaged in the heat treatment of metals and metal alloys, primarily for the automotive industry. During the course and conduct of its business operations Respondent's annual gross revenue exceeds $500,000 and it annually purchases and receives goods and materials valued in excess of $50,000 directly from points and places outside the State of Michigan and performs services valued in excess of $50,000 directly for other enterprises located within the State of Michigan which, in turn, annually ship goods and materials valued in excess of $50,000 directly to points outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organizations Involved

The Charging Party, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 157, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Unit and the Union's Representative Status

At all times material, the Charging Party and its Local 157, by virtue of Section 9(a) of the Act, have been and are now the exclusive representative for purposes of collective bargaining within the meaning of Section 9(b) of the Act of all the employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees including furnace operators, apprentice furnace operators, maintenance leaders, maintenancemen, maintenance helpers, shipping and receiving leaders, shipping and receiving employees, and general laborers employed by Respondent at its Detroit plant, but excluding office clerical employees, salaried employees, confidential employees, watchmen, foremen, guards and supervisors as defined in the Act.

B. The 8(a)(5) and (1) Violations

Beginning in 1955 Respondent and the Charging Party and its Local 157 have been parties to successive collective-bargaining agreements, the most recent of which expired on or about July 9, 1982. The recently expired contract set forth wages, hours, fringe benefits, seniority rights, layoff and recall rights, accrued vacation benefit entitlement, and other terms and conditions of employment for unit employees. On or about July 12, 1982, Respondent, by its agent, Plant Manager Charles Lee, told a unit employee that Respondent did not recognize the Charging

Party as having any power over the working conditions in the Detroit plant since the collective-bargaining agreement had expired. Since on or about July 1, 1982, and continuing to date, Respondent, by its president and treasurer, Michael Ternes, failed to pay unit employees the vacation benefits they had accrued under the collective-bargaining agreement. On or about July 12, 1982, Respondent, by Michael Ternes, its agent, unilaterally changed wages, hours, and other terms and conditions of employment of unit employees by: (1) withdrawing superseniority for layoff and recall purposes for Charging Party officers who are directly involved in grievance processing and the day-to-day administration of the contract, thereby causing the layoff of two committeemen; (2) assigning unit work to nonunit employees, foremen, supervisors, and managerial employees; (3) hiring new employees to perform unit work at less than the minimum contract rate; (4) hiring new employees to perform bargaining unit work and assigning unit work to supervisory and managerial personnel while unit employees with contractual recall rights remained on layoff; (5) implementing the terms of its last bargaining proposal to the Charging Party and its Local 157 so as to alter the computation and payment of overtime, broaden the management rights clause, require drivers to load and unload their vehicles, eliminate all but three job classifications, reduce the general laborer wage rate, reduce the number of paid holidays, eliminate double time for light up, eliminate shift premiums, reduce bereavement and paid vacation benefits, and eliminate pension benefits. All of these actions

were taken by Respondent despite no bargaining impasse having been reached with respect to any of these issues, each of which is a mandatory subject of bargaining, and without affording the Charging Party and its Local 157 an opportunity to bargain.

Accordingly, by such actions, we find that Respondent has since approximately July 1, 1982, and at all times thereafter, including July 12, 1982, refused to bargain collectively with the Charging Party and its Local 157 as the exclusive representative of the employees in the appropriate unit, and that, by such refusals, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act. Thus, we shall order Respondent to: (1) recognize and bargain collectively, upon request, with the Charging Party and its Local 157 as the

exclusive representative of all employees in the appropriate unit concerning wages, hours, and other terms and conditions of employment; (2) pay bargaining unit employees their accrued vacation benefits; (3) restore the pre-July 12, 1982, status quo with respect to wages, hours, rates of pay, and other terms and conditions of employment; (4) make employees whole, with interest, for any loss of wages or benefits they may have suffered as a result of the unilateral changes in wages, benefits, and terms and conditions of employment; (5) recall any bargaining unit employees laid off as a result of the elimination of superseniority of union officers and make said employees whole, with interest, for any losses they may have suffered as a result of their layoff; (6) recall any bargaining unit employees laid off or not recalled as a result of the hiring of new employees or the assignment of nonunit personnel to perform bargaining unit work and make said employees whole, with interest. Backpay shall be computed in the manner prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950), and interest shall be paid on all backpay in accordance with Florida Steel Corporation, 231 NLRB 651 (1977); see, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Standard Steel Treating Co. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 157, are labor organizations within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees including furnace operators, apprentice furnace operators, maintenance leaders, maintenancemen, maintenance helpers, shipping and receiving leaders, shipping and receiving employees, and general laborers employed by Respondent at its Detroit plant, but excluding office clerical employees, salaried employees, confidential employees, watchmen, foremen, guards and supervisors as defined in the Act, consititute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein the Charging Party and its Local 157 have been and are now the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing, on or about July 12, 1982, and thereafter by continuing to refuse to recognize and bargain with the Charging Party and its Local 157 as the exclusive representative of its employees in the appropriate unit; by telling a unit employee that it did not recognize the Charging Party as having any power over the working conditions in the Detroit plant; by failing to pay unit employees their accrued vacation benefits; and by unilaterally changing the wages, hours, and other terms

and conditions of employment of unit employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By engaging in the conduct described in paragraph 5 above, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Standard Steel Treating Co., Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 157, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees including furnace operators, apprentice furnace operators, maintenance leaders, maintenancemen, maintenance helpers, shipping and receiving leaders, shipping and receiving employees, and general laborers employed by Respondent at its Detroit plant, but excluding office clerical employees,

salaried employees, confidential employees, watchmen, foremen, guards and supervisors as defined in the Act.

(b) Telling employees that it does not recognize the Charging Party as having any power over the working conditions in the Detroit plant.

(c) Failing to pay unit employees the vacation benefits they have accrued under the collective-bargaining agreement.

(d) Unilaterally changing the wages, hours, and other terms and conditions of employment of unit employees by: (1) withdrawing superseniority for layoff and recall purposes for Charging Party officers who are directly involved in grievance processing and day-to-day administration of the collective-bargaining agreement thereby causing the layoff of committeemen; (2) assigning unit work to nonunit employees, foremen, supervisors, and managerial employees; (3) hiring new employees to perform bargaining unit work at less than the minimum contract rate; (4) hiring new employees to perform unit work and assigning unit work to supervisory and managerial personnel while unit employees with contractual recall rights remain on layoff; (5) altering the computation of overtime; (6) broadening the management rights clause; (7) requiring drivers to load and unload their vehicles; (8) eliminating job classifications; (9) reducing the wage rate for the general laborer classification; (10) reducing the number of paid holidays; (11) eliminating double time for light up; (12) eliminating shift premiums; (13) reducing bereavement benefits; (14) reducing paid vacation benefits; and (15) eliminating pension benefits.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, recognize and bargain with the Charging Party and its Local 157 as the exclusive bargaining representative of their employees in the above-described appropriate unit concerning rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Pay bargaining unit employees their accrued vacation benefits.

(c) Restore the pre-July 12, 1982, status quo with respect to wages, hours, rates of pay, and other terms and conditions of employment.

(d) Make employees whole for any loss of wages or benefits they may have suffered as a result of the unilateral changes implemented, in the manner set forth in the remedy section of this Decision.

(e) Recall any bargaining unit employees laid off as a result of the elimination of superseniority for union officers and make said employees whole in the manner set forth in the remedy section.

(f) Recall any bargaining unit employees laid off or not recalled as a result of the hiring of new employees or the assignment of nonunit personnel to perform bargaining unit work

and make said employees whole in the manner set forth in the remedy section.

(g) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its Detroit, Michigan, place of business copies of the attached notice marked ''Appendix.''[1] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

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[1] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(i) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. May 11, 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to recognize and bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers, UAW, and its Local 157, as the exclusive bargaining representative of our employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees including furnace operators, apprentice furnace operators, maintenance leaders, maintenancemen, maintenance helpers, shipping and receiving leaders, shipping and receiving employees, and general laborers employed by the Employer at its Detroit plant, but excluding office clerical employees, salaried employees, confidential employees, watchmen, foremen, guards and supervisors as defined in the Act.

WE WILL NOT tell employees that we do not recognize International Union, United Automobile, Aerospace and Agricultural Implement Workers, UAW, as having any power over the working conditions in the Detroit plant.

WE WILL NOT fail to pay unit employees the vacation benefits they have accrued under the collective-bargaining agreement.

WE WILL NOT unilaterally change the rates of pay, wages, hours, or other terms and conditions of employment of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, upon request, bargain with the aforementioned Union as the exclusive representative of our employees in the unit described above concerning wages, rates of pay, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed document.

WE WILL make whole any employees for any loss of earnings or benefits they may have suffered due to our unlawful unilateral actions, with interest.

WE WILL restore the pre-July 12, 1982, status quo with respect to wages, hours, rates of pay, and other terms and conditions of employment.

WE WILL pay bargaining unit employees their accrued vacation benefits.

WE WILL recall any bargaining unit employees laid off as a result of the elimination of superseniority for union officers and make them whole, with interest.

WE WILL recall any bargaining unit employees laid off or not recalled as a result of our hiring new employees or assigning unit work to nonunit personnel, and make said employees whole with interest.

STANDARD STEEL TREATING CO.

(Employer)

Dated ---------- By ----------

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226, Telephone 313--226--3244.